

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NYLYSHA STARVION BELAFON  
ARADON, et al.,

Plaintiffs,

v.

SNOHOMISH COUNTY, et al.,

Defendants.

Case No. C20-1665-RSM

ORDER DENYING MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiff A.H.'s Motion for Reconsideration of the Court's ruling on Defendant Snohomish County's first Motion in Limine. Dkt. #292. Defendant sought to exclude all witnesses and exhibits not properly disclosed until after the discovery cutoff, citing Rule 37(c)(1), which states, "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence... at a trial, unless the failure was substantially justified or is harmless." The Court granted the Motion, stating:

Defendants present sufficient evidence that certain witnesses and exhibits were not timely disclosed, and in fact were disclosed after the discovery cutoff in a haphazard and unprofessional way. Plaintiff does not dispute this. The Court need not get into the details of any earlier discovery dispute. The burden is on Plaintiff now to demonstrate that her failure to disclose was substantially justified or harmless.

1 Dkt. #286 at 9. Plaintiff did not satisfy this burden. Plaintiff's only argument to justify her  
2 failure to disclose was that, at the time of the initial Rule 26 disclosures, counsel did not know  
3 of these witnesses. This is not dispositive, as Rule 26(e) requires supplementation of initial  
4 disclosures. In arguing that the failure was harmless, Plaintiff spent significant time talking  
5 about the importance of these witnesses and exhibits and Defendant's lack of diligence  
6 pursuing discovery, quickly glossing over the fact that Defendant would have had to move to  
7 reopen discovery in order to depose these witnesses or to follow up on any questions from the  
8 exhibits produced after the cutoff. The Court found Plaintiff failed to demonstrate substantial  
9 justification and that this has harmed Defendant's ability to prepare for trial. *Id.* at 9–10.  
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11 Plaintiff asks the Court to reverse its decision to strike witnesses Colleen Stark-Bell,  
12 Anne Black, and Taylor Black, as well as “the decision to exclude all documents formally  
13 produced by Plaintiff after the discovery cut-off in 2021.” *Id.* Plaintiff flips the above burden  
14 of proof, asserting that Defendant made no showing of prejudice, surprise, or harm flowing  
15 from the timing of these disclosures and highlighting that the Court failed to apply Plaintiff's  
16 preferred five-factor test for determining whether a party's Rule 26 violation was harmless.  
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18 *See id.* at 3 (citing *Bal Seal Eng'g, Inc. v. Nelson Prod., Inc.*, 2019 WL 7865198, at \*1 (C.D.  
19 Cal. Oct. 17, 2019); *San Francisco Baykeeper v. West Bay Sanitary Dist.*, 791 F. Supp. 2d 719,  
20 733 (N.D. Cal. 2011)); Dkt. #270 at 4 (citing same).  
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22 “Motions for reconsideration are disfavored.” LCR 7(h)(1). “The court will ordinarily  
23 deny such motions in the absence of a showing of manifest error in the prior ruling or a  
24 showing of new facts or legal authority which could not have been brought to its attention  
25 earlier with reasonable diligence.” *Id.* “The motion shall point out with specificity the matters  
26 which the movant believes were overlooked or misapprehended by the court, any new matters  
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1 being brought to the court's attention for the first time, and the particular modifications being  
2 sought in the court's prior ruling." LCR 7(h)(2).

3 The five-factor test from *Bal Seal* and *Baykeeper, supra*, comes from the Fourth Circuit.  
4 It is cited in scores of California cases but has been noted only once by the Ninth Circuit Court  
5 of Appeals when discussing situations where "the sanction amounted to dismissal of a claim,"  
6 although the factors themselves were not applied. *R & R Sails, Inc. v. Ins. Co. of the Pa.*, 673  
7 F.3d 1240, 1247 (9th Cir. 2012). It is the Court's understanding that this test has not been cited  
8 in the Western District of Washington.  
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10 The Court considered and declined to apply this test. Even if it had, the burden would  
11 remain on Plaintiff to demonstrate that her failure to disclose was substantially justified or  
12 harmless. Even though some factors favor Plaintiff, the final factor is "the nondisclosing  
13 party's explanation for its failure to disclose the evidence," which the Court has already found  
14 lacking and continues to find lacking. While the harm caused by the failure to disclose could  
15 possibly have been mitigated by a reopening of discovery and further delay of trial, given the  
16 tortured procedural history of this case, the Court concluded and continues to conclude that  
17 such would not be "harmless" to Defendant.  
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19 Plaintiff also argues that certain exhibits it did not produce before the discovery cutoff  
20 were "already in the possession of Defendant and were produced by them [after the discovery  
21 cutoff," Dkt. #292 at 5, and that other exhibits were not produced prior to the discovery cutoff  
22 because they were first produced to both parties after that date, *id.* at 7. The Court finds that  
23 Plaintiff failed to adequately address these exhibits in response to Defendant's Motion in  
24 Limine. *See* Dkt. # 270. There is thus no requirement for the Court to reconsider the Court's  
25 ruling. However, in order to provide clarity, the Court finds that exhibits that were in  
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1 Defendant's possession but not disclosed or produced by Plaintiff fall within the scope of the  
2 Order and are inadmissible. Exhibits that originated from a September 2022 production to both  
3 parties at the same time are arguably outside the Court's ruling, and the Court will entertain  
4 argument on that point at the start of trial, if necessary.

5 Plaintiff has failed to demonstrate manifest error in the prior ruling or a showing of new  
6 facts or legal authority which could not have been brought to its attention earlier with  
7 reasonable diligence. Accordingly, the instant Motion will be denied.

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9 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
10 finds and ORDERS that Plaintiff A.H.'s Motion for Reconsideration, Dkt. #292, is DENIED.

11 DATED this 21<sup>st</sup> day of June, 2023.  
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15 RICARDO S. MARTINEZ  
16 UNITED STATES DISTRICT JUDGE  
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